

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7374 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEMCHAND DHANIRAM KAPIL

Versus

O N G C

Appearance:

MR RS TALREJA for Petitioners

MR BR SHAH for Respondent No. 1

MR AJAY R MEHTA for Respondent No. 2

NOTICE SERVED for Respondent No. 3, 4, 5, 6, 7

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/08/98

ORAL JUDGEMENT

By means of this petition, the petitioners seek a direction against respondent nos.1,2 and 3 to give them promotions with retrospective effect on the post of Assistant Grade-II with effect from 1965-66 and on the post of Assistant Grade-I with effect

from May, 1980 on the post of Superintendent (P & A) with effect from 1.4.1982, with all consequential benefits and restraining the respondent Commission from giving any promotion to anybody than the petitioners on the post of Administrative Officer (P and A) before the petitioners are promoted to the said post as prayed for in clause I and II, alternatively for quashing the orders Annexures "C" and "D". The petitioner nos. 1, 2, 3 and 4 were appointed on 2.12.61, 7.10.78, 22.7.75 and 28.8.81 respectively in the Administrative Discipline of the Commission, while respondent nos. 4, 5, 6 and 7 were appointed in the same department on 24.7.61, 5.8.61, 17.8.59 and 13.7.62 respectively. The respondent nos. 4 to 7 on their own option for transfer were transferred in the Account Discipline in the year 1965 and they continued upto 1990. In the scheme under the Stagnation Relief Scheme with effect from 1.4.82. Consideration of Ex-cadre service Stagnation Relief Scheme came into existence on 2.12.87. The employees fulfilling the criteria laid down in part no. 1 of the scheme were given option to revert to their parent cadre and they were to be considered for promotion in their parent cadre under 18 years promotion policy, if they were eligible otherwise. In para-4, the employees who change their cadre to a lower post and who have earned one or more promotion in the new discipline were also opted for reversion if they so desire, in that event their option for such reversion, they were to be considered for proforma promotion under the next below principle in their parent discipline and ultimately under the 18 years Stagnation Relief Scheme. In the same scheme, respondent nos. 4 to 7 opted their reversion to the parent department and they were placed at the suitable seniority in accordance with the policy laid down in paragraph-4. The contention of the learned counsel for the petitioner is that by merger of the respondents in the Administrative Discipline, the seniority of the petitioners would be affected and it violated the principles of natural justice and Rule 19(H) III of the Resolution. The learned counsel for the other side contended that the matter has already been decided by this Court and thereafter, that matter has been finally decided by the Supreme Court. In Special Civil Application no. 4811 of 1984, the prayer of the petitioners was "Application praying to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction, directing the respondent-Commission to give retrospective promotion to the petitioners on the post of Assistant Grade I with effect from 17.5.1980 on the same line applied in the Assistant Grade I of the Central Region/Head-quarters of

the respondent-Commission, both of whom were promoted initially as Assistant Grade I with effect from 1.4.1982 with all consequential benefits etc.". This Court by an order dated 23.12.1985 allowed the petition in part and the orders of promotions at Annexure "D" and "E" so far as respondent nos. 4, 5, 7, 8 and 9 in that petition who were not Telex Operators were quashed and set aside. If the respondents were entitled for the promotion on account of their original seniority as Assistant Grade-II, they were directed to be entitled for the promotion, if available and the Commission was restrained from granting further promotion to the regular employees in the cadre of Assistant Grade II on 25.4.80 of the Central and Headquarters Region on the basis of their higher promotion not senior to the Telex Operator on that date (25.4.80) till a consolidated list of all region is prepared in accordance with law and they were found eligible for promotion in the light of the observations made in the judgment. The Supreme Court in Writ Petition no. 870 of 1986 set aside the order of the High Court. Consequently the order dated May 21, 1986 passed by the Commission revoking the promotion granted to the appellant in Civil Appeal No. 535 of 1987 on the basis of the impugned judgment of the High Court were also set aside by the order dated 28.1.97. Further contention of the learned counsel for the respondents is that the respondent nos. 4 to 7 opted in the parent department in accordance with the scheme stated above and that scheme has not been challenged in this Court by this petition. As mentioned in para no. 16-A of the petition wherein it is asserted that the petitioners submitted that the promotion under the Stagnation Relief Scheme with effect from 1.4.82 Annexure "A" is not under the challenge in this petition. Hence, the petitioners cannot have claim and the petitioners' claim cannot be considered again when their claim has already been considered and decided by the Supreme Court also.

5. I have carefully considered the submissions made on behalf of the parties. The prayer made in para-21(B)(i)(ii) for a direction to the respondent Commission to give promotion to the petitioners with retrospective effect on the post of Assistant grade II with effect from 1965-66 and on the post of Assistant Grade-I with effect from May, 1980 and on the post of Superintendent (P and A) with effect from 1.4.1982 with all consequential benefits and that prayer was also made in SCA No. 4811 of 1984 by the petitioners wherein the petitioners sought for a direction to the respondent Commission to give them promotion retrospectively on the post of Assistant grade I with

effect from 17.5.80 on the same line applied to the Assistant grade-I of Central Region/Headquarters/respondent Commission, both of whom got promoted initially as Assistant grade I with effect from 1.4.1982 with all consequential benefits etc. The matter has already been decided by the Supreme Court in Writ petition (Civil) No.870 of 1986 by an order dated 28.1.97. The respondent nos.4,5,6 and 7 of that petition in the parent department (Administrative department) in the scheme (promotions under stagnation scheme with effect from 1.4.1982 ex-cadre service.) The respondent nos.4,5,6 and 7 are senior as against petitioner nos. 1,,2,3 and 4 in service. In view of the provisions of para-4 of the scheme aforesaid, the respondents have been considered for proforma promotion under the next cadre in other cadre another discipline and ultimately under 18 years stagnation relief scheme, in such cases, the revised pay and promotion was directed to be allowed only on the promotion under that scheme. As this scheme is not under challenge and under that scheme, the respondent nos. 4,5,6 and 7 have opted and have been placed in the seniority list at appropriate places.

Hence, this petition lacks merits and is accordingly dismissed with no order as to costs.

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